

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1403 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ

Versus

RAVAL AGRI.SERVICES

Appearance:

MR SP DAVE, LD. APP for Petitioner

MR PS CHAMPANERI for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/02/98

ORAL JUDGEMENT

1. Acquittal judgment and order dated 23/8/1984 rendered by the learned Special Judge, Surendranagar in Criminal Case No. 6 of 1983 has been subjected to challenge in this appeal.

2. The facts which led to the prosecution of the respondents (for short 'the accused') may briefly be

stated : The complainant Laljibhai Mahadevbhai Patel, serving as Agriculture Inspector in the Agricultural Department of the State Government inspected the office premises of the accused no. 1 on 25/2/1982. He found 199 bags of Paushak Super Phosphate there. He selected six bags of the Paushak Super Phosphate for the purpose of taking samples. He obtained 2 Kgs. of fertilizer from each of the six bags, mixed the same, took out 500 grms of fertilizers from the mixed material, prepared three samples plastic bags which were duly packed, with required slips of the Panchas placed inside the bags and making the same air tight. After so preparing the samples the complainant asked the accused no. 2 to put his seal on each of the three plastic bags, if he wanted to put his seals, but the accused no. 2 did not affix his seal. The complainant, thereafter, took two plastic bags with him and handed over one to the accused no.2. All that was done under a Panchnama. The complainant sent one plastic bag to the laboratory at Junagadh for the purpose of testing the same. The complainant himself carried another plastic bag to laboratory at Junagadh on 1/3/1982. Ultimately the test report revealed that the fertilizer was found to be sub-standard. He, therefore, lodged complaint against both the accused for committing breach of clause 13 (1)(a) of the Fertilizer (Control) Order, 1957 (for short 'the Order') read with the provision contained in sec. 7 of the Essential Commodities Act, 1955 (for short 'the Act').

3. After the evidence was adduced before the learned Special Judge and after the statement of the accused was recorded and after the arguments of both the sides were heard the learned Special Judge acquitted the accused of the offences charged u/S. 7 of the Act read with Clause 13(1)(a) of the Order. The acquittal so rendered by the learned Special Judge is under challenge before this Court as aforesaid.

4. I have heard Mr. S.P. Dave, Ld. A.P.P. for the State and Mr. P.S. Champaneri, learned advocate appearing for the accused. I have also gone through the judgment and order of the learned Special Judge. The observations made by the learned Special Judge with regard to the evidence adduced before him have not been controverted to be incorrect upon the reading of the evidence. What has been submitted on behalf of the prosecution before this Court is that the accused persons were covered under the aforesaid provisions of law when the bags, 199 in number, were found from the office of the accused no.1. It has also been submitted that by virtue of the provision of Clause 13(1)(a) of the Order

there would be a technical breach and there is no element of mensrea involved in case of such a breach. It has, therefore, been submitted that the learned Special Judge has erred in law in visualising the prosecution case from the stand point of mensrea. In reply it has been submitted that the burden of proof with regard to the breach of the relevant provisions is apparently on the prosecution and that burden has not been discharged by the prosecution and, therefore, there is no scope for holding the accused persons responsible for the alleged breach.

5. For the purpose of appreciating the submissions of the learned A.P.P. for the State and learned advocate for the accused persons, it would be appropriate to note what clause 13(1)(a) of the aforesaid order speaks about. It says that no person either by himself or by any other person on his behalf shall manufacture for sale, sell, offer for sale, stock or exhibit for sale, or distribute any fertilizer which is not of prescribed standard. It might be noted from this provision that the basic feature thereof is 'sale' or the 'business' of the fertilizers. It clearly appears from the prosecution evidence that the accused no. 2, who happened to be the owner of accused no. 1 firm was the owner of agricultural land in respect of which fertilizer would be required. It also appears from the prosecution evidence that there was no material collected by the prosecuting agency for showing that the accused no. 1 was either a retailer or a whole-seller carrying on business in the fertilizer in question. It is an admitted fact that 199 bags of Paushak Super Phosphate were manufactured by the Alembic Company as indicated from the bags themselves. The bags were in duly packed condition. Under such circumstances, placing reliance upon a decision of the Supreme Court in the case of Manipur Administration v/s. Nila Chandra Singh reported in AIR 1964 SC 1533 the learned Special Judge found that for more than one reasons the accused persons deserved to be acquitted. There was a breach of Manipur Foodgrains Dealers Licencing Order, 1958 which was complained before the Hon'ble Supreme Court in that case. There also the provision of the Order required carrying on of the business of the material in question. In that background, the Apex Court held that the words appearing in the relevant clause of the Order would indicate that the facts should show element of business which would be essential to attract the provisions of that Clause.

6. In the case in hand, apart from the failure on the part of the prosecution to establish the facts that 199 bags of the fertilizers in question were meant for

sale, following further facts emerged from the prosecution case itself: (1) the bags were in sealed condition and the words "Paushak Super Phosphate, Alembic" were found written on the bags, (2) the prosecution did not make inquiry about the date of manufacture of the said bags, (3) the prosecution did not make inquiry about the elements mixed by Alembic Paushak Limited, who manufactured the fertilizers, at the time of its manufacture, (4) the prosecution did not make any inquiry as to the period during which there would be process of deterioration in the condition of the fertilizer, (5) the prosecution admitted that no fertilizer in retail was being sold in the office premises of accused no.1, (6) the prosecution admitted that no laboratory test was required to be performed by the merchants selling the fertilizer after purchasing the same from the manufacturer, (7) there was difference in the required standard with regard to the sample examined at Junagadh laboratory and the sample examined at Gandhinagar laboratory, (8) no complaint was lodged against the company, the manufacturer of the fertilizer in question, (9) the prosecution admitted that accused no. 2 was having his agricultural land at Halavad and (10) the defence that the bags in question were meant for personal use stood probablised.

7. Bearing in mind the aforesaid state of prosecution case in the background of the evidence placed on record, I am of the opinion that the learned Special Judge has rightly held that the guilt of the accused persons was not established. This is apart from the fact that even the Panch witnesses did not support the prosecution case, they having turned hostile.

8. Hence, the facts of the present case do not call for any interference with the impugned judgment of acquittal.

This appeal is, therefore, dismissed.

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PVR cr.a140384j.